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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 ANDREW B KIMBROUGH,

12 Plaintiff,

13 v.

14 DOUGLAS WADDINGTON, DON
15 GRIFFITH, EDWARD DOMINIC,
16 KENNETH R SEBBY, R
BEDNARCZYK, NURSE SNYDER,
VICKY MARTIN, PA CROSSGROVE,

17 Defendant.

CASE NO. C08-5602 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING CASE

18 This matter comes before the court on the Report and Recommendation of the Magistrate
19 Judge (Dkt. 98) and on the Amended Complaint for Negligence, Intentional Infliction of
20 Emotional Harm, and Violation of Civil Rights (Dkt. 103). The court has considered the relevant
21 documents and the remainder of the file herein.

22 *Report and Recommendation.* On April 12, 2012, U.S. Magistrate Judge J. Richard
23 Creatura issued, a Report and Recommendation, recommending that the court dismiss this case
24 without prejudice for failure to exhaust administrative remedies. Dkt. 98.

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING CASE-

1 On May 1, 2012, plaintiff filed objections to the Report and Recommendation,
2 contending that he exhausted all administrative remedies that he was able to exhaust. Dkt. 101.
3 On May 15, 2012, defendants filed a response to the objections, contending that plaintiff failed to
4 exhaust his administrative remedies, and failed to state claim for relief. Dkt. 102.

5 The court has reviewed the record *de novo*. Plaintiff failed to exhaust his administrative
6 remedies by failing to file grievances concerning each claim he makes in this case, and by failing
7 to pursue the grievances through all levels of the institution's grievance system. Because he
8 failed to exhaust his administrative remedies, the court should adopt the Report and
9 Recommendation and dismiss the case without prejudice.

10 *Amended Complaint for Negligence, Intentional Infliction of Emotional Harm, and*
11 *Violation of Civil Rights.* On May 16, 2012, plaintiff filed an amended complaint. Plaintiff did
12 not seek leave of the court to file an amended complaint. *See* Fed.R.Civ.P. 15. Nonetheless, the
13 court has reviewed the amended complaint. Plaintiff alleges that, when he attempted to file
14 grievances, apparently related to the claims he advances in this case, the response was that the
15 grievances were untimely. Even if those allegations are true, plaintiff has not alleged that he
16 pursued appeals of the denial of those grievances through all levels of the grievance system.
17 Accordingly, plaintiff should not be permitted to file the amended complaint.

18 Accordingly, it is hereby **ORDERED** that (1) the Report and Recommendation of the
19 Magistrate Judge (Dkt. 98) is **ADOPTED**; (2) plaintiff's request to file the amended complaint
20 (Dkt. 103) is **DENIED**; (3) this case is **DISMISSED WITHOUT PREJUDICE**; and (4) in the
21 event that plaintiff files an appeal of this order, *in forma pauperis* status is **DENIED**, without
22 prejudice to plaintiff to file an application to proceed *in forma pauperis* with the Ninth Circuit
23 U.S. Court of Appeals.

1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
2 to any party appearing *pro se* at said party's last known address.

3 Dated this 22nd day of May, 2012.

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5 ROBERT J. BRYAN
6 United States District Judge
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